IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) No. 656 OF 2003

DATE OF DECISION : 20.12.2005

IN THE MATTER OF :

Smt. Surinder Kaur & Ors. .....Plaintiffs
Through Ms.Gita Dhingra

Versus

Sh.Pritam Singh & others .....Defendants.
Through Mr. Punjeet Bajaj for the defendant No.1
Mr.Sanjeev Bhardwaj for the defendant No.5.

CORAM :-
THE HON'BLE MR.JUSTICE A.K.SIKRI

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest? Yes

A.K. SIKRI, J. (Oral)

The parties are related to each other. The plaintiffs have filed the suit for partition of a property bearing No.C-82, Old Vishnu

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Garden. The defendants 2 to 5 did not appear and were proceeded ex-parte vide order dated 4th May, 2004. However, keeping in view the fact that it was a family dispute, it was deemed proper to send the matter for mediation in order to explore the possibility of settlement. Thus vide order dated 4th May, 2004, Dr.Sudhir Kumar Jain, Additional Director, Delhi Judicial Academy, Karkardoom Court Complex who is also Additional District Judge, Delhi was appointed as the mediator in the case and it was directed that the parties shall appear before him on 5th May, 2004. All the parties appeared before the mediator including the defendants 2 to 5 though they were proceeded ex parte in these proceedings.

2. After protracted negotiations and due to the intervention/mediation of Dr. Sudhir Kumar Jain, the parties were able to arrive at amicable settlement. The terms of this settlement are mentioned by the learned mediator in his report dated 28th August, 2004 forwarded by him to this court. Along with the report,

proceedings held by him on various dates are also filed. Last meeting of the parties took place on 27th August, 2004 wherein the agreed terms of settlement were recorded. As per these terms, the dispute between the parties has been settled in the following manner:

> (i) The property bearing No.C-82, Situated at Old Vishnu Garden, New Delhi shall be partitioned between Sh.Hardayal Singh and Sh.Prem Singh in equal proportion. Sh.Prem Singh shall retain the portion situated towards the property No.C-83, while Hardayal Singh shall retain the portion situated towards the property No.C-81. Both Hardayal Singh and Prem Singh have agreed to partition the property themselves without the intervention of other persons/brothers.
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> (ii) The property No.C-82 is also under the occupation of plaintiff's Surender Kaur & Sh.Harjinder Singh and Sh.Harpal Singh. They shall vacate the portion of the property bearing No.C-82, under their possession, use and occupation on or before 31.3.2005.
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> (iii) Sh.Harpal Singh and Sh.Hardayal Singh also mutually agreed upon that Sh.Hardayal Singh shall hand over the possession of the ground floor of the portion of his share/property towards the property No.C-81, to Sh.Harpal Singh after partition of the

property. In lieu of this, Sh.Harpal Singh shall pay a sum of Rs.3,50,000/- (Rupees Three Lacs Fifty Thousand) to Sh.Hardayal Singh. Both of them further agreed that it shall be done before 31.3.2005.

(iv) There are two shops in the property bearing No.WZ-66, Meenakshi Garden, Tilak Nagar, New Delhi. At present one shop is in the possession of Harpal Singh. Sh.Harpal Singh shall retain the said shop alongwith the terrace.

(v) That Sewa Singh shall be given another shop situated towards the main Road by Sh.Pritam Singh alongwith terrace. Sh.Sewa Singh shall be put into the possession of the said shop by Sh.Pritam Singh by on or before 31.3.2005.

(vi) Sh.Pritam Singh shall retain remaining portion open as well as constructed of property bearing No.WZ-66, Meenakshi Garden (except two shops with terrace) as his share in properties in question. The terrace also shall be in share of Sh.Pritam Singh.

(vii) The plaintiff Surender Kaur along with plaintiff Harjinder Singh has agreed to vacate the portion forming part of the property bearing No.C-82, Old Vishnu Garden, under her occupation on or before 31.3.2005 and in lieu of this plaintiffs shall be given a sum of Rs.6,00,000/- (Rupees Six Lacs) by Sh.Pritam Singh on or before 31.3.2005.

(viii) The plaintiff Surender Kaur and defendants

S/Sh.Pritam Singh, Sewa Singh, Hardayal Singh and Prem Singh each also agreed to give Rs.40,000/- (rupees Forty thousand) total amounting to Rs.2,00,000/- (rupees Two Lacs) to Sh.Harpal Singh on or before 31.3.2005.

(ix) All the parties have agreed to work out and execute the said settlement amongst themselves without any difference.

(x) All the parties have agreed upon terms of settlement out of their free will and without any fear, pressure and coercion.

(xi) The plaintiff Surender Kaur has agreed to withdraw the case after execution of terms and conditions of settlement among all the parties.

3. All the defendants have signed the settlement. The plaintiff No.1 has also signed this settlement for herself as well as on behalf of the plaintiffs 2 and 3 who are her daughter and son respectively. The plaintiff No.3 is present in court and he states that the settlement is acceptable to him also. The plaintiff No.1 makes further statement that she has taken the consent of both the plaintiffs 2 and 3 before arriving at the aforesaid settlement and it is

acceptable to the plaintiff No.2 as well. She further states that she would file an affidavit of the plaintiff No.2 in this behalf in this court within one week.

4. After this settlement was received in this court, parties appeared. In terms of the settlement, the plaintiffs have to receive a sum of Rs.6 lacs and have to vacate the portion of the suit premises occupied by them. Since this payment was not made which as per the settlement was to be made by 31st March, 2005, the plaintiffs have filed IA No.7880/2005 praying that the aforesaid settlement be effected. When this application came up for hearing on 28th November, 2005 all the parties were present and they stated that on the next date of hearing (i.e. today) they would discharge their part of the obligation by bringing requisite money/keys of the premises. It is for this reason that the matter was adjourned for today.

5. It may be noted at this stage that this court has already framed Mediation and Conciliation Rules, 2004 which have been

notified vide Notification No.171/Rules/DHC dated 11th August, 2005. Rules 24 and 25 thereof are relevant for our purposes which are reproduced below:

> "Rule 24 **Settlement Agreement**
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> (a) Where an agreement is reached between the parties in regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the conciliation/mediator may obtain his signature also on the settlement agreement.
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> (b) The agreement of the parties so signed shall be submitted to the mediator/conciliator who shall, with a covering letter signed by him, forward the same to the Court in which the suit or proceeding is pending.
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> (c) Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the mediator/conciliator is of the view that no settlement is possible, he shall report the same to the Court in writing.
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> Rule 25: **Court to fix a date for recording settlement and pasing decree.**
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> (a) On receipt of any settlement, the court shall fix a

> date of hearing normally within seven days but in any case not beyond a period of fourteen days. On such date of hearing, if the court is satisfied that the parties have settled their dispute (s), it shall pass a decree in accordance with terms thereof.
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> (b) If the settlement dispose of only certain issues arising in the suit or proceeding, on the basis of which any decree is passed as stated in Clause (a), the court shall proceed further to decide remaining issues.

6. Since the settlement agreement has already been arrived at and all the parties have signed the agreement, decree can be passed in terms thereof in view of the provisions contained in Rule 25 if the court is satisfied that the parties have settled their disputes.

7. However, at this stage, learned counsel appearing for the defendant No.5 submits that there was some oral understanding between him and the defendant No.4 as per which the defendant No.4 had agreed to allow him to use the shop bearing No.WZ-66, Meenakshi Garden, New Delhi in common with the defendant No.4.

The defendant No.4 denies that there was any such agreement between the parties and submits that whatever was agreed upon between the parties has been reflected in the settlement dated 27th August, 2004 based on which report dated 28th August, 2004 is sent by the arbitrator. The contention of the defendant No.5 about any such oral settlement does not inspire confidence inasmuch as the parties had negotiated the settlement through the good offices of the mediator and had decided on the modalities of the settlement by agreeing to detailed terms recorded in this settlement. Had there been any such understanding, it would have been included in the settlement itself. On this plea, therefore, the defendant No.5 cannot be allowed to back out of the settlement which he had earlier agreed to. I am, therefore, of the opinion that the parties have entered into the settlement as per the terms recorded before the mediator.

8. By amendment in the Code of Civil Procedure in the year 2002, legislature amended the provisions of Section 89 thereof

under the heading `Special Proceedings' and provided for settlement of disputes outside the court. This provision contained in Section 89 stipulates that where it appears to the court that there exists elements of a settlement which may be acceptable to the parties, the court may refer the matter for arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation. Thus, the legislative intention is to encourage settlement of disputes through the mechanism of Alternate Dispute Resolution (ADR). Sub-Section (2) of Section 89, inter alia, provides that where the dispute has been referred for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed. Since compromise has been effected in mediation proceedings, the procedure which is to be followed is the one prescribed, namely, Mediation and Conciliation Rules, 2004 reference to which has already been made. We may also take assistance from Order XXIII of the Code of Civil Procedure in this

behalf. As per the provisions contained in Rule 3 of Order XXIII a decree in terms of compromise can be passed when the court is satisfied that the parties have compromised the subject matter of the suit. Rule 3 of Order XXIII reads as under:

> "3. **Duty of Court to make efforts for settlement-(1)** In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, which it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.
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> (2) If, in any such suit or proceeding, at any stage it appears to the court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.
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> (3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings."

9. Proviso to the aforesaid Rule stipulates that where it is alleged by one party and denied by the other that an adjustment or

satisfaction has been arrived at, the court has to decide this question. Here the defendant No.5 does not dispute that settlement as recorded was entered into between the parties, he also does not dispute that he appended signatures to the said settlement and agreed upon the terms contained therein. His only allegation is that something more was agreed to by the defendant No.4, namely, common user of one of the shops which the defendant No.4 is not agreeing to, now.

10. As already pointed out, there is nothing on record to indicate this and it is very unlikely that this was agreed upon between the parties when all other terms of the settlement are reduced into writing.

11. Therefore, I am satisfied that the parties have compromised the suit as per the terms contained in the settlement before the mediator for which the mediator has sent his report. Decree in terms thereof is passed. While drawing the decree, terms

of the settlement recorded on 27th August, 2004 and sent by the mediator along with his report shall also form part of the decree. It is agreed by all the parties that the terrace above the shops would belong to occupants who are given the shops as per the settlement.

12. As already mentioned above, as per this settlement some payments were to be made by specified dates which have already expired. Therefore, the parties agree for fixing fresh schedule for this purpose in the following manner:

(i) The defendant No.1 has to pay a sum of Rs.6 lacs to the plaintiff No.1. The defendant No.1 has handed over a cheque in the sum of Rs.5 lacs in favour of the plaintiff and remaining amount of Rs.1 lac shall be deposited by the defendant No.1 in this court in the name of the Registrar General during the course of the day. After encashment of this sum, the same shall be kept in the fDR for a period of two months. The papers which are to be signed in favour of the defendant No.1 like relinquishment deed etc. the plaintiffs 1

and 3 have signed these papers in the court today. Balance amount of Rs.1 lacs is retained in this court to ensure that the plaintiffs co-operate in mutation of the different properties in favour of the defendant No.1 by signing whatever documents are required to be signed by them. However, as and when this money is needed by the plaintiffs for making arrangement for alternate residence or any other purposes, the plaintiffs shall be entitled to approach this court for withdrawal of this amount.

(ii) The plaintiffs undertake to vacate the premises by 20th January, 2006 and hand over the possession to the defendant No.3/Mr.Prem Singh as per the settlement.

(iii) In terms of the settlement, Mr.Harpal Singh has to receive a sum of Rs.2 lacs which is to be paid by Mr.Pritam Singh, Mr.Sewa Singh, Mr.Prem Singh, Mr.Hardayal Singh and Mrs.Surinder Kaur. Mr.Pritam Singh, Mr.Sewa Singh and Mr.Prem Singh have given their share of Rs.40,000/- each to Mr.Harpal Singh

and two of them have given the amount in cash. Mrs.Surinder Kaur undertakes to give this amount within five days.

(iv) Mr.Hardayal Singh is to receive Rs.3.5 lacs from Mr.Harpal Singh. Since he has to pay Mr.Harpal Singh Rs.40,000/-, after adjustment of this amount, Mr.Harpal Singh shall pay Rs.3.10 lacs to Mr.Hardayal Singh. This amount is offered to Mr.Hardayal Singh. However, he has refused to accept the same. Mr.Harpal Singh is directed to deposit a sum of Rs.3.10 lacs in the name of the Registrar General of this Court by pay order within seven days.

(v) Mr.Pritam Singh has given keys of the shop in property bearing No.WZ-66, Meenakshi Garden to son of Mr.Sewa Singh.

13. The suit is decreed in terms of settlement. No costs.

December 20, 2005 **A.K.SIKRI, J**
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